

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE ACTING SECRETARY OF THE INTERIOR,

IN RESPONSE

*To a Senate resolution of January 15, 1891, relative to certain settlers within the Yellowstone National Park.*

FEBRUARY 29, 1892.—Referred to the Committee on Territories and ordered to be printed.

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., February 27, 1892.*

SIR: I have the honor to acknowledge the receipt of a resolution adopted by the Senate on the 15th of January, 1891, of which the following is a copy, to wit:

IN THE SENATE OF THE UNITED STATES,  
*January 15, 1891.*

*Resolved.* That the Secretary of the Interior be, and he is hereby, directed to investigate and report whether on the 1st day of March, A. D. 1872, there were within the limits of the Yellowstone National Park settlers thereon, qualified under the laws of the United States to enter lands, who prior to said date had made settlement and improvements on lands therein with the view to enter the same; and if such settlers and improvements did exist the name or names of such settlers, with the value of their several improvements and the character thereof at the date aforesaid, and the circumstances attending their said settlements, including an estimate of the amount, if anything, to which they or any of them are severally and equitably entitled on account of the loss of such improvements and settlement by reason of the establishment of such Yellowstone National Park at the date aforesaid.

Attest:

ANSON G. MCCOOK,  
*Secretary.*

In response thereto I have to state that the attention of the Department was first directed to the fact that there were settlers on the land within the limits of what is known as the Yellowstone National Park, at the time it was set aside as a public reservation, by the superintendent of the park in his annual report for 1872 (Senate Ex. Doc. 35, Forty-second Congress, third session), in which he states:

A few months before the passage of the act of March 1, 1872, creating the park, several persons had located upon land at some of the points of greatest interest, with a view to establish a squatter's right of preëmption, and they have since made application for such preëmption of property, which embraces some of the chief attractions of the locality. Certainly their settlement upon these lands established no right of preëmption or purchase in their favor. Any expenditures they may have made were at their own risk, especially if made after the passage of the act.

Subsequently, in April of 1873, Mathew McGuirk, of Bozeman, Mont., filed a declaratory statement of his right and title to 160 acres of land 3 miles south of Gardiner River, Wyoming, and requested remuneration for time, money, and labor expended by him in making improvements on certain lands referred to in his statement and embraced within the limits of the Yellowstone Park, or failing that, a lease be granted for the improved property for a fixed term of years, and on the same date a similar application was received from H. R. Horr of the same place.

In his report on the merits of such applications dated April 11 and June 19, 1873, respectively, the superintendent of the park called attention to the fact that Messrs. Horr, McGuirk, and one McCartney were located in the park prior to the passage of the act of March 1, 1872 (17 Stats., 32), and recommended that the two former be permitted to occupy temporarily the portions of land on which they had made improvements but that no lease be granted, which recommendation was approved. A similar privilege was accorded McCartney who subsequently became one of the assistant superintendents of the park.

In March of 1874, Messrs. James C. McCartney and Henry R. Horr, through the Hon. M. Maginnis, filed certified copies of their declaratory statements of their title to 160 acres each of land on the Yellowstone River, and claimed that as the original settlers on the tract of land set apart as a public reservation and known as the Yellowstone Park, they should be given the preference in the granting of leases of privileges in said park.

In January of 1882 one J. C. Baronette filed a petition for remuneration for a bridge built by him in 1870 across the Yellowstone River, in the Yellowstone National Park.

No formal leases for the occupancy of any portion of the park was ever granted said claimants, and no adjudication of their respective claims for remuneration was had, as the Secretary of the Interior was without jurisdiction in the premises.

The records of the department fail to show the value of the improvements claimed to have been made by said parties, and the only place any specific reference to the character of the alleged improvements can be found is in the report of the superintendent of the park for the year 1877, as follows, to wit:

As C. J. Baronette had, at great danger and expense, constructed a bridge at the forks of the Yellowstone, where indispensable for access to the mines or of travel in much of the park, and J. C. McCartney had, with much expense and cost, constructed hotel, bath, and other accommodations at the Mammoth Hot Springs, many months before the setting off of the park, and have constantly and more beneficially to the public than to themselves held peaceable possession of them until the recent Indian raid, it seems but fair they should either be paid a reasonable remuneration for surrender of their improvements, if taken by the Government (which I do not recommend) or allowed a fair preference in securing ten or twenty years' leases for bridge and hotel rights at their respective localities. These are all the permanent occupants or improvements, in addition to the above-mentioned mining interests within the park.

Also in the report of the superintendent for the year 1880, p. 36, under the head of habitations of white men in the park, to wit:

A log house upon the point just above the forks of the Yellowstone, built by C. J. Baronette in the spring of 1871. This was soon burned, presumably by Indians, and a second one, now in ruins, constructed on its site.

Earth-roofed log house in the ravine flanking the Mammoth Hot Springs, built by J. C. McCartney and Henry Horr in the summer of 1871, with which have been subsequently associated other houses, as well as bath houses, some of which are shingle roofed.

An earth-roofed log house, and also a cabin bath-house, built by M. McGuirk in 1871-'72, near the Mammoth Hot Springs, and which still bear his name.

With a view to securing all the information possible upon the subject-matter of the resolution it was referred to Capt. Geo. S. Anderson, captain Sixth Cavalry, acting superintendent of the park, for investigation, and in his report (copy of which, with inclosures, is hereto attached) he refers to four persons—to wit, Messrs. Horr, McCartney, McQuirk, and Baronette—as having made settlements on and improvements of lands in the Yellowstone Park prior to March 1, 1872, specifies the character of the improvements as far as practicable, and submits an estimate of the value thereof.

From the evidence before me I am unable to determine (1) whether the parties referred to were at the time they located in the park qualified under the laws of the United States to enter lands, or (2) to state the circumstances attending their settlements, or (3) the value and character of the several improvements on the 1st of March, 1872, other than as set forth in the report of the acting superintendent above referred to.

The settlers in the park hereinbefore mentioned appear to have an equitable claim to remuneration for the loss of improvements by reason of the establishment of the Yellowstone Park, but I am unable, under the circumstances to submit any estimate of the amount which should be granted them therefor, other than that embodied in the report of the acting superintendent of the park.

Copies of the papers herein referred to, and such others appearing on the files of the Department as bear upon the matter, are herewith transmitted.

Very respectfully,

GEO. CHANDLER,  
*Secretary.*

The PRESIDENT OF THE SENATE.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF SUPERINTENDENT  
YELLOWSTONE NATIONAL PARK,  
*Mammoth Hot Springs, Wyo., May 23, 1891.*

SIR: Complying with the request contained in your letter of the 26th of March last concerning settlers in the park prior to March 1, 1872, I have to report as follows:

On that date there were but three men who had settled in the park and begun improvements, and they are—

(1) *Mr. J. C. McCartney.*—Mr. McCartney now keeps a saloon in the town of Gardiner, Mont., and is one of the leading citizens of that place. He tells me that he entered the park in June, 1871, with a Mr. Horr as a partner; he subsequently bought out Mr. Horr's interests; he made a location near where the Cottage Hotel now stands, at Mammoth Hot Springs fenced in 200 or 300 acres; built a log cabin and with two other men commenced getting out lumber for the erection of better buildings the next year. The estimates that I have received of the value of the improvements actually made before the 1st of March, 1872, vary greatly.

The hut or cabin was built of logs, without floor, window glass, or roofing. It could probably be put up at the present time for \$100. One of the most expensive features of it was a good stone chimney. In those days when all provisions had to be "packed" into the park, and it was almost impossible to get hired help, the expense of such a build,

ing would be much greater. I have had an estimate as high as \$600 put on this hut.

I believe that Mr. McCartney was at that time "qualified under the laws of the United States to enter lands," but he had fenced in more than he was entitled to "enter," or, in fact, more than both himself and partner were entitled to. The value of the fencing is difficult to estimate. The material was timber in the rough, cut near by, but labor was expensive.

I should regard \$100 a fair estimate for so much of it as was on his legal preëmption. As to the amount of lumber cut and sawed that year, but not used in any building until the year following, I can find no satisfactory evidence. Mr. Barronette (who is also a claimant) says Mr. McCartney had as high as \$5,000 worth of improvements here before he was directed to suspend his work. As he had begun work before the park was "declared," probably he was right in thinking he was protected in his location by the law. He so far protected his claim as to file his location in two different places. His estimate of \$3,000 does not seem to be excessive.

The papers furnished by Mr. McCartney are appended.

(2) *Mr. C. J. Barronette.*—Mr. Barronette located on the Yellowstone River, near the mouth of the Lamar River, in 1871, and built roads and a bridge there. He also put up a small house and some other temporary buildings. His bridge was solidly built, in two spans, with stone abutments and stone pier. It was made of hewn timbers, both frame and flooring, and had side rails and approaches. These approaches were difficult of construction, and Mr. Barronette says he expended a good deal of money on them and the road leading to the bridge. All his improvements, including the bridge, were destroyed by the Nez Perces in 1877, and subsequently rebuilt on the same location. I believe Mr. Barronette was "qualified under the laws of the United States to enter land." He says he never made any filings on his site, but was allowed to go on with his improvements until after Capt. Harris assumed the superintendency, 1886 or 1887. He says he can not well estimate the value of his improvements on March 1, 1872, but that in all he expended about \$7,000 on his house, the roads, and the toll bridge. He further said that he did not think his improvements on the 1st of March, 1872, as valuable as those of Mr. McCartney. I have had one interview with Mr. Barronette, but he left for the Stinking Water mining district before I could get affidavits in his case, and it would now be difficult to find him. If Mr. McCartney's claim be allowed to stand at \$3,000 I should say, from all I can learn, that Mr. Barronette's ought to be about \$2,500.

(3) *Mr. Mathew McGuirk.*—Mr. McGuirk put up a shanty in 1871 about a mile and a half below here, on the banks of the Gardiner River. The evidence that he erected other buildings that year is very doubtful, as will be seen by his own affidavit he did not arrive here until August, 1871.

The opinion of all whom I have inquired of is that he hardly got up a log shanty covered with dirt for that winter then approaching. It will be noticed that his stereotyped affidavits all name a long array of buildings erected by him, but they fail to state that they were erected prior to the 1st of March, 1872, and in fact they were not so erected. In his own affidavit he mentions the establishment of a garden in November, 1871, at a time when the country was, in all probability, deeply covered with snow.

I believe he was "qualified under the laws of the United States to enter land," but apparently he made no attempt to "enter" this claim.

At the present time there are but faint evidences of his improvements remaining on the site. His own estimate I regard as absolutely excessive, and I consider \$1,000 as ample compensation for him.

Just as this report was completed thus far I received a letter from Gen. Allen Rutherford, of Washington, attorney for Mr. H. R. Horr, asking that I delay the report until he could submit evidence in behalf of Mr. Horr's claim. I answered that I would withhold my report a reasonable time and asked them to hurry up with their evidence. A few days ago I received a letter from Mr. Horr, in which he lays claim to certain compensation for unnamed improvements. He was undoubtedly here in 1871, in partnership with Mr. McCartney.

I understand Mr. McCartney purchased the interest of Mr. Horr and remained sole owner. In any event the estimate made by Mr. McCartney is sufficient to cover the entire improvements of both. I feel that in the hands of such able counsel Mr. Horr's interests will not suffer. In his letter he somewhat mixes the equities of this case with his right to a pension.

I do not feel able to settle the case as between Mr. McCartney and Mr. Horr, but it appears to me as though the entire award should be given to the former.

I am sir, yours very truly,

GEO. S. ANDERSON,  
*Captain Sixth Cavalry, Acting Superintendent.*

The SECRETARY OF THE INTERIOR,  
*Washington, D. C.*

DEPARTMENT OF THE INTERIOR.

Hon. JOHN W. NOBLE, *Secretary:*

James C. McCartney, of Gardner, in the county of Park and State of Montana, hereby presents his claim against the United States for the value of the improvements erected by him in the years 1871 and 1872, upon a tract of land containing 160 acres upon which McCartney settled in July, A. D. 1871, which land is within the boundaries of what is known as Yellowstone National Park, created by the act of Congress approved March 1, 1872 (17 Statutes at Large). Said improvements having been taken, occupied, and used by the Government, and being then of the value of \$3,000, consisting of one dwelling house constructed of logs, one story high, having one room, said building being 30 feet long by 20 feet wide. And another hewed log dwelling well constructed, one story high, containing four rooms, said building being 35 feet long and 25 feet wide. And also one log barn (logs squared), 30 feet long by 15 wide. And also another building 30 feet long by 25 feet wide, one story high, constructed of squared logs 20 feet long by 16 feet wide, all of said buildings being then properly finished.

J. C. McCARTNEY,  
*Claimant.*

MAY 15, 1891.

STATE OF MONTANA, *county of Gallatin, ss:*

James C. McCartney, being first duly sworn, says that he is the claimant mentioned in the foregoing claim; that he is a native citizen of the United States of America, having been born in the State of New York; that he is 56 years of age; that he came to what is now the State of Montana in the year 1866, and has resided therein ever since, except as herein otherwise stated; that on or about the 1st day of July, A. D. 1871, he went upon the tract of land in said complaint mentioned and hereinafter more particularly described, and settled thereon intending to acquire title thereto from the United States under the homestead act; that he has never had the benefit of the homestead laws of the United States, except as to his claim to said land; that he surveyed and staked and marked the boundaries of his said claim; that at the

time he settled thereon that country was known in Montana as the "Big Horn" country; that on the 5th day of July, A. D. 1871, after making said survey, he filed in the office of the recorder of the county of Gallatin, in the Territory of Montana, a declaration of his claim, he supposing at that time that the said land was in the Territory of Montana, a certified copy of which declaration is hereto attached and made a part of this affidavit; that afterwards, about the month of August, A. D. 1871, having ascertained that it was likely that said land was in the Territory of Wyoming, he filed a similar declaration of said claim in the office of the recorder of Uinta County, Territory of Wyoming; that immediately after surveying said claim as aforesaid he commenced the construction and erection of the buildings mentioned in said claim and prosecuted the work diligently until the said buildings were erected; that all of said buildings were erected as aforesaid by him in good faith without any objection on the part of the Government, or notice that the Government intended to claim or take the same; that in those days labor was expensive, and building materials were particularly costly in that section of country; that the said buildings cost affiant at least \$3,000; that after the said park was set off by the act of Congress above referred to the Government of the United States took possession of all of said buildings and has ever since used the same as its officers and agents desired; that in the year 1881 the Government tore down and took away four of said buildings, and left the building containing four rooms standing, which is now still used and occupied by the Government; that this affiant has never received any compensation whatever for any of said property, and was deprived of all thereof and put out of possession of the same by the agents of the United States.

J. C. McCARTNEY.

Subscribed and sworn to before me this 15th day of May, A. D. 1891.

L. A. LUCE,  
Notary Public.

DECLARATION OF J. C. M' CARTNEY.

To all whom these presents may concern:

Know ye, that I, James C. McCartney, of the county of Big Horn in the Territory of Montana, do hereby declare and publish as a legal notice to all the world that I have a valid right to the occupation and enjoyment and possession of all and singular that tract and parcel of land not exceeding 160 acres, situate, lying, and being in the valley of the Yellowstone River, in said Territory, bounded and described as follows: Commencing at a point on Warm Spring Creek 4 miles from its confluence with the Yellowstone River and at a warm spring flowing from beneath a rock, thence south-westerly 1 mile, thence southeasterly 80 rods, thence by a line parallel to the first line 1 mile, thence to the place of beginning, together with all and singular the hereditaments and appurtenances therunto belonging or in any wise appertaining.

Witness my hand and seal on the 5th day of July, A. D. 1871.

[SEAL.]

Filed for record on the 5th day of July, A. D. 1871, at 5 o'clock p. m.

R. H. CRAWFORD,  
Recorder.

STATE OF MONTANA, *County of Gallatin, ss:*

John S. Mendenhall, being first duly sworn, says that he is a resident and has resided in what is now the county of Gallatin, State of Montana, which county borders upon said Yellowstone Park, ever since long prior to the year 1871, and during all of that time he has been well acquainted with the James C. McCartney mentioned in the foregoing claim, and whose affidavit is attached thereto; that he knows said McCartney to be a good citizen whose statements are worthy of belief; that he has heard said affidavit read and knows the contents thereof, and that the facts therein stated as to the erection of the said buildings are true, and that according to the best of his judgment, and from his knowledge of the country and cost of the erection of buildings in those days, that the said buildings must have cost said McCartney at least \$3,000, and that he has frequently seen all of said improvements.

JOHN S. MENDENHALL.

Subscribed and sworn to before me this 15th day of May, A. D. 1891.

L. A. LUCE,  
Notary Public.

TERRITORY OF MONTANA, *County of Gallatin:*

I, Madison M. Black, county clerk and recorder in and for said county and Territory, hereby certify that the foregoing is a true and correct copy of declaration of

J. C. McCartney filed and recorded in the county recorder's office, on the 5th day of July, A. D. 1871, in Vol. H of Records, page 309.

In testimony whereof I hereunto set my hand and affix the county seal at my office in Bozeman City, this 23d day of March, A. D. 1881.

MADISON M. BLACK,  
*County Clerk and Recorder.*

STATE OF MONTANA, *County of Gallatin, ss:*

Madison M. Black, being first duly sworn, says that he has resided in what is now the county of Gallatin, State of Montana, ever since the year A. D. 1871, and since that time has been well acquainted with the said James C. McCartney, and knows him to be a worthy citizen, whose statements are entitled to belief; that he knows the land described in said McCartney's claim and affidavit foregoing; that he had seen the improvements mentioned by said McCartney in his said claim and affidavit, upon said land; that considering the cost of getting out such building material and the erection of such buildings in those days when said buildings were erected, they must have cost, in the opinion of the affiant, somewhere about \$3,000, a little more or less; that the affiant is the same Madison M. Black whose name is signed to the certified copy attached to these papers.

MADISON M. BLACK.

Subscribed and sworn to before me this 15th day of April, A. D. 1891.

L. A. LUCE,  
*Notary Public.*

STATE OF MONTANA, *County of Park, ss:*

Zadok H. Daniel, being first duly sworn, deposes and says that he is well acquainted with Mathew McGuirk, and knows of his own personal knowledge that said Mathew McGuirk located 160 acres of land under the preëmption law in the year of 1871 on what was then unsurveyed land, and there were springs upon said land that were called and known as "McGuirk's Medical Springs," said lands and springs being situated on what is now known as the Yellowstone National Park, near Mammoth Hot Springs; that said McGuirk had improvements thereon as follows, to wit: Dwelling house, outhouses, stable, irrigating ditches, and bath pools.

ZADOK H. DANIEL.

Subscribed and sworn to before me this 13th day of May, A. D. 1891.

ORLANDO EMMONS,  
*Clerk of District Court of Park County, Mont.*

STATE OF MONTANA, *County of Park, ss:*

Fellows D. Pease, being first duly sworn, deposes and says that he is well acquainted with Mathew McGuirk, and knows of his own personal knowledge that said Mathew McGuirk located 160 acres of land under the preëmption law in the year of 1871 on what was then unsurveyed land, and there were springs upon said land that were called and known as "McGuirk's Medical Springs," said land and springs being situated on what is now known as the Yellowstone National Park, near Mammoth Hot Springs; that said McGuirk had improvements thereon as follows, to-wit: Dwelling house, outhouses, stable, irrigating ditches, and bath pools.

FELLOWS D. PEASE.

Subscribed and sworn to before me this 13th day of May, A. D. 1891.

ORLANDO EMMONS,  
*Clerk of the District Court of Park County, Mont.*  
By JAS. A. BAILEY,  
*Deputy Clerk.*

STATE OF MONTANA, *County of Park, ss:*

Chas. W. Hoffman, being first duly sworn, deposes and says that he is well acquainted with Mathew McGuirk, and knows of his own personal knowledge that said Mathew McGuirk located 160 acres of land under the preëmption law in the year 1871, on what was then unsurveyed land, and there were springs upon said land that were called and known as "McGuirk's Medical Springs," said land and springs being situated on what is now known as the Yellowstone National Park, near Mammoth Hot Springs; that said McGuirk had improvements thereon as follows, to-wit, dwelling house, outhouses, stable, irrigating ditches, and bath pools.

CHAS. W. HOFFMAN.

Subscribed and sworn to before me this 15th day of May, A. D. 1891.

JOHN MCLEOD,  
*Clerk of District Court of Gallatin County, Mont.*

Mathew McGuirk, being duly sworn, deposes and says:

That in August, 1871, he settled upon 160 acres of unsurveyed land, situated near the Mammoth Hot Springs and within what is now known as the Yellowstone Park, and upon which the springs commonly known as McGuirk's Medical Springs arise; that in November, 1871, he commenced to improve the said land by building a dwelling house, outhouses, stable and bath pools, constructing irrigating ditches, cultivating a garden, clearing the Gardiner River, in order to make it passable for logs used in improving the said land, all of which was done prior to March 1, 1872, the total value of the said improvements being at least \$4,000.

Affiant further swears that in the year 1874 he was removed from the said land by Superintendent Norris, who was at that time in charge of the national park, and that his improvements were used and occupied by the Government employes in the park up to the year 1890; and further affiant saith not.

MATHEW MCGUIRK.

Subscribed and sworn to before me this 18th day of May, 1891.

F. L. REECE,  
Notary Public.

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DEPARTMENT OF THE INTERIOR,  
Washington, January 5, 1891.

SIR: In compliance with the request of the Committee on Public Lands for a report on Senate bill 4432, for the relief of Henry R. Horr, I have the honor to transmit a copy of a report submitted by the chief of the patent and miscellaneous division of this Department, to whom the same was referred. The facts set out therein are correct, as shown by the records of this Department. In my opinion the amount proposed to be appropriated is excessive, and the bill should not become a law.

Very respectfully,

JOHN W. NOBLE,  
Secretary.

Hon. P. B. PLUMB,  
Chairman Committee on Public Lands, United States Senate.

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DEPARTMENT OF THE INTERIOR,  
Washington, January 5, 1891.

SIR: I return herewith Senate bill No. 4432, for the relief of Henry R. Horr for improvements taken from him by the creation of the Yellowstone National Park, referred to me by your letter of the 30th ultimo for investigation and report.

It appears from the records and files of this division that on the 8th of March, 1873, a letter from H. R. Horr was received by reference from the Hon. W. H. Claggett, in which he claimed remuneration from the Government for time, money, and labor expended by him in making improvements on certain lands embraced within the limits of the Yellowstone National Park, or failing that, that a lease be granted him for the occupation of said improved property for a fixed term of years.

This letter was duly referred to N. P. Langford, the then superintendent of the park, for an expression of his views as to the justice and propriety of the claim, and was by him returned under date of April 11, 1873, with the recommendation that Mr. Horr be permitted to occupy temporarily that portion of the premises upon which he had already made improvements, but that no lease be granted. By Department letter of May 9, 1873, Mr. Horr was advised that the Secretary of the Interior had no authority to adjudicate the claim for remuneration; that such a claim should be presented to Congress. That no formal lease could be granted for the occupancy of any portion of the park until specific authority therefor was conferred by Congress. Should such authority be granted, however, a lease might be accorded him upon terms not materially less than might be offered other parties, but other things being equal he would be given the preference. That he would be permitted to occupy temporarily the premises improved on the condition that such occupancy would not imply the existence of any right of preëmption or priority of claim for lease in his favor; that the Department should be notified as to acceptance of such privilege. On the 12th of June, 1873, he replied, stating that he was about to apply to Congress for reimbursement on account of improvements, etc., and would avail himself of the privilege offered, provided it would not be considered as impairing the justice of claim for reimbursement for loss of valuable property. Under date of July 9, 1873, the Department replied that it did not feel at liberty to modify the conditions on which he would be allowed to occupy the property.

On the 7th of March, 1874, Mr. Horr filed, through the Hon. W. B. Allison, an application for lease of a hotel site in the Yellowstone National Park, claiming as one of the original settlers to be entitled to the preference in awarding of such leases within the park limits. The Department replied under date of March 21, 1874, that it would be impossible to decide upon the merits of such claims until Congress made provision for a resident superintendent of the park who could personally investigate the matter. Subsequent to the date last above mentioned I am unable to find that Mr. Horr ever presented his claim to the Department and therefore no investigation as to its merits has been made.

The entire correspondence herein referred to fails to show the value of the improvements made by Mr. Horr, and the only place I can find any reference to the character of the alleged improvements is in the report of the Superintendent of the National Park for the year 1880, page 36, under the head of the habitations of white men within the park, to wit: "Three earth-roofed log houses in the ravine flanking the Mammoth Hot Springs, built by J. C. McCartney and Henry Horr in the summer of 1871, with which have been subsequently associated other houses, as well as bath houses, some of which are shingle-roofed."

By the bill referred to herein it is proposed to pay Mr. Horr the sum of \$10,000 as compensation for his settlement, squatter, and property rights at Mammoth Hot Springs taken for public use; under the decision of the Supreme Court in the Yosemite Valley case (*Hutchins v. Lowe*, 15 Wallace 77) Mr. Horr in settling on land which is now within the Yellowstone Park acquired no rights of which Congress could not deprive him; he seems, however, to have an equitable claim to remuneration for the improvements made by him on the property and if the approximate value thereof could be ascertained it should be paid. In my judgment the bill as it now stands should not become a law, as the amount it is proposed to appropriate is excessive.

Very respectfully,

THOS. H. MUSICK,  
*Chief Patent and Miscellaneous Division.*

THE SECRETARY OF THE INTERIOR.

BOZEMAN, MONT., *February 28, 1874.*

DEAR MCGINNIS: Dr. Crepin, Harry Horr, and James McCartney request that I ask your aid in securing to them a lease of the Mammoth Hot Springs in the National Park of Montana. These gentlemen have for some years been there and have expended considerable money in building roads and putting up houses for the accommodation of visitors. They still intend to make further improvements which will cost considerable money. They desire that you call upon the Secretary of the Interior and try to get them a lease for term of ten years. They are very desirous that it should be done at as early day as possible. Now by giving this matter your attention you will confer a great favor. Dr. Crepin, one of the parties, is an old friend of mine and is in every way a worthy gentleman. I am also satisfied that he will be a very suitable person for the place. Hoping that you may be able to do something for these parties,

I am very truly yours,

T. J. DAWES.

P. S.—I received your letter a few days since and am obliged, etc.

DECLARATION OF JAMES M'CARTENEY.

To all whom these presents may concern:

Know ye, that I, James C. McCartney, of the county of Big Horn, in the Territory of Montana, do hereby declare and publish as a legal notice to all the world that I have a valid right to the occupation and enjoyment and possession of all and singular that tract and parcel of land not exceeding 160 acres, situate, lying, and being in the valley of Yellowstone River in said Territory, bounded and described as follows: Commencing at a point on Warm Spring Creek, 4 miles from its confluence with the Yellowstone River, and at a warm spring flowing from beneath a rock, thence south-westerly 1 mile, thence southeasterly 80 rods, thence by a line parallel to the first line 1 mile, thence to the place of beginning.

Together with all and singular the hereditaments and appurtenances thereunto belonging or it any wise appertaining.

Witness my hand and seal on the 5th day of July, A. D. 1871.

[SEAL.]

J. C. MCCARTNEY.

Filed for record on the 5th day of July, A. D., 1871, at 5 o'clock p. m.

R. H. CRAWFORD,  
*Recorder.*

TERRITORY OF MONTANA, *County of Gallatin* :

I, Arch. Graham, county clerk and *ex officio* recorder in and for said Gallatin County, hereby certify that the within and foregoing is a full, true, and perfect copy of the declaration of James C. McCartney of occupation and possession as amply and fully as the same now remains of record in my office; recorded in Vol. H of Deeds, at page 309.

In witness of which I herewith set my hand and affix the seal of said county at office, in Bozeman, the 17th day of February, 1874.

ARCH. GRAHAM,  
*Recorder.*

## DECLARATION OF H. R. HARR.

To all whom these presents may concern :

Know ye that I, Harry R. Harr, of the county of Big Horn in the Territory of Montana, do hereby declare and publish as a legal notice to all the world that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land not exceeding 160 acres situate in the valley of the Yellowstone River, in said Territory, bounded and described as follows: Commencing at a point on the southwest line of the claim of James C. McCartney at a stone monument or obelisk rising in a magnesian plain, thence northwesterly 80 rods, thence southwesterly 160 rods, thence southeasterly 160 rods, thence northeasterly 160 rods, thence northwesterly to the place of beginning, together with the rights, hereditaments, and appurtenances thereunto belonging.

Witness my hand and seal this 5th day of July, A. D. 1871.

H. R. HARR. [SEAL.]

Filed for record on the 5th day of July, A. D. 1871, at 5 o'clock p. m.

R. H. CRAWFORD,  
*Recorder.*

## DEPARTMENT OF THE INTERIOR.

*Washington, March 21, 1874.*

SIR: I have the honor to acknowledge the receipt by your reference of communications from Mr. H. R. Harr and others in relation to their respective claims, as original settlers in the tract of country recently set apart by Congress as a public reservation, under the name of the "Yellowstone National Park," to be entitled to a preference in the awarding of leases for hotel and other privileges within the limits of said park.

Similar claims and applications have been received by this Department from some of the parties above referred to, but no action has been taken in any case. It will be impossible for me to decide upon the merits of such claims or applications until Congress shall have provided for the employment of a resident superintendent of the park, who shall be able, after personal investigation, to advise the Department in the premises, by a suitable appropriation. An urgent appeal has been made by this Department to Congress for such an appropriation, and a bill submitted for the consideration of that body.

I am, sir, very respectfully, your obedient servant,

C. DELANO.  
*Secretary.*

Hon. M. MAGINNIS,  
*House of Representatives.*

BOZEMAN, *April 27, 1873.*

DEAR SIR: The object of this epistle is to lay before you for consideration my claim to a certain property located in what is now known as the national park. I went there and located before there was any talk of locating such park, and did not know there ever would be, which you will see by the record and testimony of the parties concerned and witnessed and testified to before the county clerk. The reason of it not being done sooner was that I was shut in from all communication by the storms of 1872 and could not get out for four months. This property is known as McGuirk's Medical Springs, situated  $1\frac{1}{2}$  miles from the Mammoth Hot Springs.

Your petitioner, acknowledging the power invested in you by Congress, asks at your hands a lease of said premises, as designated, which our Delegate, Clagget, informs me is the only title I could expect.

I have invested my all in improving said property, and it would be a serious loss if I do not get it; and as a loyal American citizen I have a right to expect it.

I have the honor, sir, to remain yours, most respectfully,

M. MCGUIRK.

Hon. COLUMBUS DELANO.

To all to whom it may concern:

Know ye that I, Mathew McGuirk, of Wyoming Territory, do make and publish this as a legal notice to all the world that I have a valid right to the occupation, possession, and enjoyment of the following-described tract, piece, or parcel of land, situate, lying, and being in said Wyoming Territory and described as follows, to wit: Not to exceed 160 acres, about 3 miles south of the mouth of Gardiner River. Beginning at a stake on the bank of Gardiner River, just below the mouth of the branch, brook, or stream formed by the water from the hot springs, claimed by Henry R. Horr and James McCartney, thence southward up Gardiner River 320 rods, thence westward 80 rods, thence northward 320 rods, thence eastward 80 rods to the place of beginning. Together with all the privileges and appurtenances thereunto belonging or in any wise appertaining, and that I claim settlement and improvement thereon on the 11th day of November, 1871.

In the witness of which I hereunto set my hand and seal this March 9, 1872.

MATHEW MCGUIRK.

TERRITORY OF MONTANA, *County of Gallatin*:

On the 9th day of March, 1872, personally appeared before me, Arch Graham, county clerk within and for said county, Mathew McGuirk, who is known to me to be the person whose name is signed to the foregoing instrument of writing, and acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I hereunto sign my name and affix my official seal at Bozeman, Mont., the day and year last aforesaid.

ARCH GRAHAM,  
*County Clerk.*

TERRITORY OF MONTANA, *County of Gallatin*:

We, Henry R. Horr and James Pencill, do solemnly swear that we are personally and well acquainted with Mathew McGuirk, whose name is subscribed to the foregoing declaration of settlement and occupation of the land therein described; that we were with him on the 11th day of November, 1871, when he settled and improved the same, and that he did make such settlement and improvement; that he has resided on said lands continuously since that date and still continues to reside thereon, and that he signed the foregoing declaration aforesaid in our presence; so help me God.

HENRY R. HARR.  
JAMES PENCIL.

Subscribed and sworn to before me, Arch Graham, county clerk within and for Gallatin County, Mont.

Witness my hand and seal this 9th day of March, 1872.

ARCH GRAHAM,  
*County Clerk.*

DEPARTMENT OF THE INTERIOR,  
*Washington, June 3, 1873.*

SIR: I transmit herewith for your consideration and report a copy of a letter dated the 27th of April last, with accompanying papers, from Matthew McGuirk, who claims certain property embraced within the limits of the Yellowstone National Park, and requests that a lease be granted to him for the occupation of said property.

McGuirk alleges that he settled on said property before that section of country was set apart for a national park, and considers himself, therefore, entitled to preference in the matter of a lease. The act of March 1, 1872, which created the park, authorized this Department to grant leases for property within the park, but under certain restrictions. The second section of the act is as follows:

"That said public park shall be under the exclusive control of the Secretary of the

Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes, for terms not exceeding ten years, of small parcels of ground at such places in said park as shall require the erection of buildings for the accommodation of visitors. All of the proceeds of said leases, and all other revenues that may be derived from any source connected with said park, to be expended under his direction in the management of the same, and the construction of roads and bridle paths therein. He shall provide against the wanton destruction of the fish and game found within said park, and against their capture or destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom; and generally shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act."

It is evident, from the portion of the law which I have underscored, that I possess no authority to grant leases for ground within the park, except for building purposes, and in small parcels, in such locations as may require the erection of buildings for the accommodation of visitors.

Mr. H. R. Horr makes a similar claim for property within the park, and desires a lease. Upon receipt of your report in relation to his request, he was informed that he would be allowed to occupy, temporarily, the ground he claims to have settled on, but that no lease would be granted to him until after the meeting of next Congress. He writes, under date of the 15th ultimo, that he has been informed by Mr. Clagett, late Delegate from Montana, that this Department would grant him a lease. - I have no knowledge of any promise on the part of this Department to grant a lease to Mr. Horr.

I am ignorant of the purposes for which the parties before named desire leases, neither do I know whether the land occupied by them is located in such places as may require the erection of buildings to accommodate visitors. All these facts should be ascertained by personal investigation, and if it be not practicable to make such investigation during the present season, no leases will be granted by this Department for any ground in said park until after the meeting of Congress.

I will thank you for an expression of your views upon this subject. If the claim of McQuirk is as equitable as that of Horr, I presume a similar permission to that given to the latter may be given to the former.

I am, sir, very respectfully, your obedient servant,

C. DELANO,  
*Secretary.*

Mr. N. P. LANGFORD,  
*Superintendent Yellowstone National Park, St. Paul, Minn.*

ST. PAUL, MINN., *June 19, 1873.*

SIR: Your letter of the 3d instant, relative to the application of Matthew McQuirk for a lease of a portion of the Yellowstone National Park, has been received, and I respectfully recommend that Mr. McQuirk be allowed to temporarily occupy the premises on which his buildings are located and that he be advised that no leases will be granted until after the next session of Congress. He should, moreover, be assured that neither the granting of this permission nor the fact that he had settled upon the premises before the act of dedication was passed can establish in his favor any right of preëmption or any just claim for a lease upon terms more favorable to himself than would be granted to other parties.

Messrs. Horr, McCartney, and McQuirk all assume that their occupation of the premises prior to the passage of the act of March 2, 1872, gave them, if not the right of preëmption, at least a *claim*, which the Government must recognize, for a lease of 160 acres of land each for a merely nominal moneyed consideration really amounts to nothing. I am advised that the decision of the United States Supreme Court in the case of Mr. Hutchins, of the Yosemite Valley, is wholly adverse to this assumption.

If such is the case, or, contrariwise, if the Department is of the opinion that such an assumption upon the part of the claimants is without foundation in law, the parties should be advised that they have no claim upon the United States, more than others have, who are without the limits of the park; but that, upon terms not less favorable to the Government than others are ready to proffer, they will be given the preference whenever leases are granted.

In this connection their attention should be called to the fact that only "leases for building purposes" and "of small parcels of ground" can be granted. It will be observed that Mr. McQuirk claims 160 acres adjoining the claims of Messrs. Horr and McCartney, who also claim 160 acres each. The effect of the possession by

these parties of so large an area would be to compel visitors to pay such tribute in the shape of hotel bills as might be exacted by the lessees, who could thus exclude from the springs all visitors who, from motives of economy, novelty, or romance might choose to abide in their tents in their own camp.

The question of leases is one of so much importance (in view of the fact that all improvements, of whatever value, revert to the Government upon their expiration) that great care should be exercised in granting them; for the rental value of leased premises will be necessarily determined by the value of the improvements, and this value will be different in different localities.

I have been for many years acquainted with Mr. McGuirk and Mr. Horr and have no objection to them as tenants, but there will be so few visitors who will desire to avail themselves of hotel accommodations that no great necessity at present exists for the construction of buildings, other than those already erected, for the accommodation of visitors.

With the approval of the Department I appointed in April last, Mr. David E. Folsom as my assistant. Mr. Folsom is now in Montana and will report to me the necessity, if any exists, for the erection of additional buildings.

The communications of Mr. Horr to the Department, as well as Mr. Clagett's recommendation that a lease be granted to Messrs. Horr and McCartney, have been heretofore referred to me, and I am satisfied that there has been no promise upon the part of the Department to grant a lease to either of these parties. I have this day written to Mr. Clagett inquiring if such a promise was ever given to him.

I am very respectfully, your obedient servant,

N. P. LANGFORD,  
*Superintendent Yellowstone Park.*

Hon. C. DELANO,  
*Secretary of the Interior, Washington, D. C.*

SIR: The petition of C. J. Baronett would respectfully represent that he did, in the year 1870, at great cost, erect and construct on the upper Yellowstone River, in Wyoming Territory, a bridge across said river to enable the miners to go to and come from the Clark Fork mines, in Wyoming Territory; that said bridge was absolutely necessary for that purpose; that without it mining could not have been carried on only a very short time each year; that the bridge and other buildings cost your petitioner over \$4,000; that from the time last mentioned said bridge was known and recognized, maintained and kept, as a toll bridge until 1877; that the travel was meager and principally by prospectors and miners who generally were without money and unable to pay any toll whatever.

That the income of said bridge was not sufficient to keep the same in repair. That during the Nez Percé Indian war the said bridge was of great service to the Army, Gen. Howard crossing his command over the river on said bridge. The Indians having crossed a short time before and set fire to and burned a portion of the bridge, Gen. Howard ordered one of the dwelling houses to be torn down and used to repair the bridge that the troops might cross. That your petitioner kept the said bridge in repair until 1880, at which time he deemed it in an unsafe condition, and rebuilt the upper part anew, putting in new stringers and floor braces, iron, etc., at a cost of over \$2,000. That said bridge is and has been useful to the officers and employés of the National Park, officers of the Army, tourists, miners, and generally useful to the public, and an absolute necessity. It is safe, strong, and in good condition. Your petitioner further says that he has not taken toll sufficient to pay the interest on the first cost of the bridge. That he built the same before the National Park was known or created, with the view of ultimately being reimbursed by and through the collection of tolls.

He would therefore respectfully ask and submit, first, that the honorable Secretary grant him a permit or license to keep and maintain said bridge as a "toll bridge," for a sufficient length of time to repay him for the amount already expended, and should this be deemed impracticable, then your petitioner would ask that a fair compensation be allowed him for the said bridge, such as would be equitable and just under the circumstances.

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior.*

C. J. BARONETT.

I am personally cognizant of the facts hereinbefore stated (except as to the cost of the bridge), and recommend the same to your careful and favorable consideration.

P. W. NORRIS,  
*Superintendent of National Park.*

BOZEMAN, MONT., October 6, 1881.

